

Court Of Appeals
Division Two
Of The State Of Washington

FILED
COURT OF APPEALS
DIVISION-II
2016 APR 19 PM 1:38
STATE OF WASHINGTON
BY AP
DEPUTY

State Of Washington
Respondent,

No. 48183-9-II

v.

Statement Of
Additional Grounds
For Review

Keith Adair Davis
Appellant.

I, Keith Adair Davis, Have Received
The Opening Brief Prepared By My Attorney.
Summarized Below Are The Additional Grounds
For Review That Are Not Addressed In That Brief.
I Understand The Court Will Review This Statement
Of Additional Grounds For Review When My Appeal
Is Considered On The Merits.

Additional Ground 1

1. Defendant Was Not Allowed, In Timely Manner, To Exercise
His Constitutional Rights For Self Representation; Several
Times, Pre-Trial Motions, Hearings, Etc.

" "

a. Denial Of Right To Self-Representation Is Per Se Harmful.
Harris v. State, 113 Nev. 799, 942, P.2d 151 (1997).

b. Denial Of Right To Self-Representation Under Supreme Court's
Faretta Decision Is Prejudicial Per Se. Const. Amend v 1.
People v. Sohrab (1997).

c. I, Requested On Several Occasions To Assert
Constitutional Right To Defend Myself, Via., Pre-Trial
Motions, And Motions Submitted By Assigned Counsel
(Please See Attachments #'s 1-20).

d. A Defendants Assertion Of His Constitutional
Right To Represent Himself Must Be Made In A
Timely Manner, Prior To The Day Of Trial, As I
Did, On Three Seperate Occasions, As Well As,
Several Motions Were Given To Assigned Counsel
To Submit To The Court, As The Court Would Not
Allow Me To Submit Any Motions.

e. When A Court Has Granted A Defendants Request To
Represent Himself, The Court Must, Also Grant A
Reasonable Continuance In Order For The De-
fendant To "Prepare To Defend His Case, People v.
Fulton (1979, Cal App) 155 Cal Rptr 327

f. A Defendant Need Not Have The Skill And Experience Of A Lawyer In Order Competently And Intelligently To Choose Self-Representation; Rather, A Record That Affirmatively Shows That He Was Literate, Competent, And Understanding, And He Was Voluntarily Exercising His Informed Free Will Sufficiently Supports A Waiver Of The Right To Counsel. *State v. Davallou*, 153 Conn. App. 419, 101 A. 3d 355 (2014).

g. The Test Governing A Defendant's Motion For Self-Representation Is Not Whether The Defendant Is Competent To Represent Himself Adequately, But Whether He Is Competent To Make The Decision To Represent Himself. *Cleveland v. State*, 87 So. 3d 813 (Fla. 1st DCA 2012). *Wilson v. State* (2013). *State v. Jones* (2011). *Eaton v. State* (2013).

Additional Ground 2

2. Assigned Counsel's Performance Fell Below An Objective Standard Of Reasonableness.

a. Each And Every, Pre-Trial Hearing, Which Were Many, In The, 7-Month Period Prior To Trial, Assigned Counsel, Came To Court Unprepared.

b. Assigned Counsel, Eventually, Revealed That He Was Not Honest And Fortright.

c. Assigned Counsel, Would Ask Me To Draw Up A Motion, Which Were Many, And He Would File Them, However, He Would Not File Them. Only Attempt To Orally, Make The Request, At A Hearing.

d. Assigned Counsel, Entered No Documents Into Evidence, "No" Exhibits Were Entered For Defense. Being That Trial Started The Same Day The Court Allowed Self-Representation, And No Continuance, I Was Not Allowed To Submit Anything. (Example: See Attachment 21).

e. Absolutely, No Evidence, Nothing Was Submitted For Trial, From Assigned Counsel (See Attachments 22, 23, 24).

f. Appointed Counsel Failed To Investigate, Failed To Obtain Evidence.

g. Assigned Counsel Made Errors So Serious That He Was Not Functioning As The "Counsel" Guaranteed The Defendant By The Sixth Amendment.

h. Assigned Counsel Actively Represented Conflicting Interest And The Conflicting Interest Adversely Affected His Performance, By Having An Over-Whelming Case-Load, Of Up To, 60 Clients, At Any Given Time.

i. Counsels Function In Representation, A Criminal Defendant Is To Assist Defendant, And Hence Counsel Owes Client Duty Of Loyalty, A Duty To Avoid Conflicts Of Interests.

3. Assigned Counsel Broke "Rules Of Professional Conduct," 1.4 Communication, 2.1 Advisor.

4. Assigned Counsel And I, Did Have And Continued To Have, "A Complete Breakdown In Communication."

a. He Did Not Prepare Defendant's Defense, As To How They Had Discussed, For Seven Months. Defendant Was Unaware, Until Day Of Trial, When There Was Absolutely, No Defense, To Present To Defendant, When The Trial Court, Finally Allowed Self Representation. No Exhibits, No Nothing.

b. Defendant And Assigned Counsel Discussed "Diminished Capacity," At Time Of Alleged Crime. He Prepared Nothing. (See Attachments 27, 28, 29, 30).

Additional Ground 3

5. Assigned Counsel Submitted A Motion And Declaration For Withdrawal. (Attachments 31, 32).

a. A Complete Breakdown Of Communication Is A Good And Sufficient Reason For Withdrawal.

Additional Ground 4

6. Does The Defendant Actually Assault The Victim In The Second Degree? How?

a. Defendant Was The One Punched In Head.

b. Defendant Put On Record, That The Follow Through Of The Victim's Punch, Is How The Broken Skin On His Wrist Happened, By Way Of Defendants Jagged Teeth, Not The Balls Of Broken, Safety Shattered, Automobile, Standard Windows.

c. Officer's Testimony, In Regards To The One Laceration, Admits, That I+Was "Safe" To Assume The Glass Cut Him, The Victim.

d. The Officer Speaks Of The "One" Laceration, In The "Plural" Sense, However, There Is Only One Laceration. (See Attachment 34, 35).

Additional Ground 4

7. Trial Court Erred, When Defendant Requested A "Mistrial," And Denied Request. (See Attachments 36, 37, 38, 39).

8. Trial Court Erred, By Not Allowing Defendant, Anytime To Prepare For Trial, And Knowing That His Assigned Counsel Had No Defense To Hand Over To Defendant For Self-Representation. (Please See Attachment 19.).

" "


" "

" "

Conclusion

I Pray That The Court, Can See The "Injustice," Of This Conviction, Although The Defendant, Knows Very Well, That He Broke, Not Just Someones Car Window, But A World War II Vets Car Window. And The World War II Vet, Punched The Defendant In His Head. Rightfully So. But, There Was No, Second Degree Assault, No Deadly Weapon, Nor, Was There Any Type Of, Attempted Theft Of A Motor Vehicle. There Was, A, 48-Year-Old Man, Experimenting With "Crystal Methamphetamine," He Thought, Was Assisting Him With His Battle Of Multiple Sclerosis, And Suffered, Aparently, A Well Known Side-Effect, Paranoid Schizophrenia, Dillusional And Neurotic Psychosis.

Keith A. Davis #216001169
King County Jail
500 Fifth Avenue
Seattle, WA 98104

Respectfully Submitted,

Keith Adair Davis

1 JAIL STAFF: I can't take restraints off.

2 THE DEFENDANT: I'm already in shackles in a
3 wheelchair. I can't go anywhere.

4 JAIL STAFF: Mr. Davis, I'm not going to argue
5 with you.

6 THE DEFENDANT: I'm not trying to argue with
7 you. I'm trying to read this document here. Can you
8 at least take one of these off? How come you're the
9 only officer in the world who puts two on?

10 THE COURT: Mr. Davis, good afternoon to you.

11 THE DEFENDANT: Good afternoon, Your Honor.

12 THE COURT: This is Cause Number 15-1-526-3.
13 Mr. Jefferson, good afternoon to you.

14 MR. JEFFERSON: Good afternoon, Your Honor.

15 THE COURT: Mr. Keith Adair Davis is before
16 the court on his motion to represent himself. The
17 court has reviewed the record and the file.

18 Mr. Davis, the court did not receive any
19 memorandum of authorities or brief from you. Did you
20 intend to file anything with the court?

21 THE DEFENDANT: File concerning --

22 THE COURT: Your motion, any law that you want
23 to rely on.

24 THE DEFENDANT: Well, basically, I'm just
25 asking the court to exercise my constitutional right

1 to represent myself in this matter.

2 THE COURT: Okay. And I have received your
3 motion filed with the court May 27. I don't think it
4 was dated by you. But apart from the motion that you
5 filed, did you file anything else?

6 THE DEFENDANT: I didn't file anything else,
7 but I wrote the second part to it.

8 THE COURT: Okay.

9 THE DEFENDANT: Basically, I'm exercising --
10 I'm asking the court -- I'm motioning the court to
11 exercise my constitutional right to represent myself
12 in this matter pro se to release Mr. Lawrence
13 Jefferson, esquire, as follows. I have represented
14 myself previously and have done rather well.
15 Unfortunately, I have a 40-year criminal history.
16 It's -- at nine years old I was a runaway. Children
17 were picked up in juvenile facilities. Parents
18 called, et cetera, in the '70s. I have much
19 experience with the system, basically.

20 So I -- I'm a nonviolent individual. I detest
21 violence. I have been charged with a violent crime
22 merely because I have ten criminal points, all
23 nonviolent, all VUCSA charges and my history.

24 The prosecutorial misconduct norm is to super over
25 charge people to get them to plead to a still even

1 over charge. Mr. Jefferson is already overworked
2 with probably 100 clients or so. He's busy. I can
3 handle this case myself, whereas Mr. Jefferson can
4 focus on the cattle folks.

5 Mr. Jefferson has agreed, if the court permits, to
6 be my standby counsel in this matter. His skills and
7 efforts can be focussed on the many -- the many other
8 than my -- than me. Okay. Although the law states I
9 am innocent until proven guilty, it's actually I am
10 seen as guilty and have to prove my innocence as we
11 know. So no one knows better than I as my defense of
12 the events that inspired -- or transpired.

13 I suffer with secondary progressive multiple
14 sclerosis. I cannot afford to take any chances on
15 being sent to prison with all of my diagnosed
16 complications and dysfunctions, being that the prison
17 systems are not able to facilitate my medical needs
18 such as jails, either. Therefore, going to prison is
19 really not an option. Prison is counterproductive
20 for me, as well as a costly burden on the state. And
21 why? Because of agreed. Debt creates credit; credit
22 creates debt. I must -- I shall not allow myself to
23 be wronged in this manner.

24 I do apologize to the court, County of Thurston,
25 and my great State of Washington for my toxic-induced

1 insanity for this crime that I am being charged with.
2 But in no way am I anywhere near guilty of assaulting
3 anyone, never have, never will.

4 THE COURT: Mr. Adair, tell the court, meaning
5 me, what it is that you are charged with.

6 THE DEFENDANT: They charged me with a second
7 degree assault with a deadly weapon.

8 THE COURT: And what are the elements of that
9 crime?

10 THE DEFENDANT: Well, the elements -- for one,
11 you have to assault someone.

12 THE COURT: And what is an assault?

13 THE DEFENDANT: Well, you have to physically
14 put your hands on someone.

15 THE COURT: Okay.

16 THE DEFENDANT: And physically hurt them.

17 THE COURT: What are the other elements?

18 THE DEFENDANT: Um, I'd have to really
19 research and get on with the other elements. I don't
20 know them just by thinking about them. I'd have to
21 research a little bit to give them to you verbatim.

22 THE COURT: What else are you charged with?

23 THE DEFENDANT: A deadly weapon.

24 THE COURT: Okay. Is there another crime that
25 you're charged with?

1 THE DEFENDANT: The other crime, malicious
2 mischief.

3 THE COURT: And tell me what the elements of
4 that crime are.

5 THE DEFENDANT: Well, being malicious. I
6 mean, it could be breaking a window, doing
7 something -- it's a property crime.

8 THE COURT: Okay. What are the elements of
9 malicious mischief in the third degree?

10 THE DEFENDANT: I don't know off the top of my
11 head. Again, I'd have to look that up. But I could
12 tell you by looking that up.

13 THE COURT: And what are the maximum penalties
14 by law for both of those crimes?

15 THE DEFENDANT: I'm looking at 68 months or
16 something of that nature.

17 THE COURT: What are the maximum penalties
18 anyone could receive for those two crimes?

19 THE DEFENDANT: Probably -- probably ten
20 years. I think -- being that it's a Class B felony,
21 you're talking about ten years, because I have ten
22 points.

23 THE COURT: Okay. And what is the maximum
24 penalty for malicious mischief in the third degree?

25 THE DEFENDANT: I believe it's a year.

1 THE COURT: Okay.

2 THE DEFENDANT: But the -- anyway, my point --

3 my point is, I've been overcharged. I didn't assault

4 anyone. And there was no -- there was no -- there

5 was no weapon. So it was just an overcharge as the

6 prosecutor -- as prosecutions do.

7 THE COURT: Have you ever represented

8 yourself?

9 THE DEFENDANT: Yes.

10 THE COURT: Tell me about that.

11 THE DEFENDANT: Well, I won.

12 THE COURT: Tell me when it was, where it was,

13 and what the charges were.

14 THE DEFENDANT: King County. It was a-- first

15 it came out to be a kidnapping, which was crap. And

16 then it turned out to be a tampering with a witness.

17 And that was crap. So, I mean, it all turned out to

18 be where it was -- it ended up being a mistrial, and

19 they came with a deal after nine months, and of

20 course I signed, because I was tired of sitting in

21 jail.

22 THE COURT: How long ago was that?

23 THE DEFENDANT: 2009.

24 THE COURT: Okay. Mr. Davis, I mean no

25 disrespect, but are you currently or have you ever

1 taken any medications for any mental illness?

2 THE DEFENDANT: No.

3 THE COURT: Are you currently taking any
4 medications?

5 THE DEFENDANT: For multiple sclerosis, yes.

6 THE COURT: And besides the instance that you
7 just advised me about, the instance where you
8 represented yourself, have you been to trial?

9 THE DEFENDANT: Yes.

10 THE COURT: Tell me what your experience is in
11 picking a jury.

12 THE DEFENDANT: My experience? I don't -- I
13 don't follow what you're asking.

14 THE COURT: How do you pick a jury?

15 THE DEFENDANT: Well, I'll ask them questions
16 and see if we are on the same -- if we could come to
17 the same -- I don't know -- understandings about
18 things.

19 THE COURT: Tell me more about the mechanics,
20 the logistics of picking a jury.

21 THE DEFENDANT: The mechanics? Man, I need a
22 dictionary with you.

23 THE COURT: Okay. Tell me how it is that you
24 go about picking a jury.

25 THE DEFENDANT: Well, eye contact. Eye

1 contact. I'm going to ask questions to see if we can
2 relate on certain things.

3 THE COURT: How many jurors in Superior
4 Court in a felony trial?

5 THE DEFENDANT: I believe I get to pick six
6 and he picks -- and the prosecution picks six.

7 THE COURT: And tell me how that works, how it
8 is that you pick six.

9 THE DEFENDANT: Well, it's a -- you're going
10 to get a whole bunch of people, and I get to go
11 through one or two and then the prosecution gets to
12 go through one or two. And then we say, well, we
13 don't want that one or he don't want that one. And
14 it's kind of a pick-and-choose situation, say I ain't
15 gonna pick this one, he might not want that one and
16 he'll strike that one --

17 THE COURT: Okay. Can you --

18 THE DEFENDANT: -- and it kind of works like
19 that.

20 THE COURT: -- can you give me any more
21 detailed information about that process?

22 THE DEFENDANT: Well, I mean, I'll ask
23 questions, and they'll ask questions, and we just
24 kind of go from there. It's more of a feeling type
25 of thing. That's how I do it. I mean, I'm going to

1 ask questions pertaining to -- I'm not going to bring
2 up the crime, but I'm going to bring up certain
3 situations.

4 I mean, I might ask a juror, Are you an
5 out-of-the-box thinker. And if they don't understand
6 what that is, I'll try to explain what out-of-the-box
7 thinking means.

8 THE COURT: Do you talk to potential jurors
9 individually or all together? Tell me how that
10 works.

11 THE DEFENDANT: I do it kind of the same.
12 I'll talk to some of them individually, and then I'll
13 take statements from all. So I kind of gather them
14 all together. I mean, I try to keep it -- I'm not
15 trying to -- I don't try to make it into a big
16 fiasco, because I'm really trying to get to the point
17 and get out of there.

18 THE COURT: What's your level of education?

19 THE DEFENDANT: 70,000 degrees. No, I'm
20 kidding. No, I have a -- I have some college.

21 THE COURT: Tell me about your college.

22 THE DEFENDANT: Well, I took my GED at 15. I
23 went to work. And when I worked for Boeing, I went
24 to Green River College to further educate myself.
25 After Boeing, I went and did construction and further

1 educated myself in the construction field.

2 THE COURT: Are you familiar with the rules of
3 evidence?

4 THE DEFENDANT: Yes, I am.

5 THE COURT: Tell me about that.

6 THE DEFENDANT: The rules of evidence. Well,
7 there's certain rules that have to be met in order to
8 become evidence. Is that what you mean?

9 THE COURT: Tell me as much detail as you can
10 about the rules of evidence.

11 THE DEFENDANT: As much detail as I can about
12 the rules of evidence. Okay. The rules of evidence,
13 it has to -- the rules of evidence. First off, it's
14 got to be pertaining to the crime. The evidence has
15 to meet the crime. I mean, you can't just make
16 things up and say this is going to convict this
17 person or you can use this evidence as a rule. You
18 can't just -- you can't just make things up. It
19 has -- there's guidelines. That's the best way I can
20 explain them to you.

21 THE COURT: How many rules are there?

22 THE DEFENDANT: It depends. I'm sure there's
23 quite a few.

24 THE COURT: Are you familiar with the rules of
25 court?

1 THE DEFENDANT: Well, yes.

2 THE COURT: Tell me about that.

3 THE DEFENDANT: Well, there's certain
4 guidelines. There's certain -- there's certain
5 steps. Everything has an order and a procedure. I
6 mean, when you -- I don't have the books in front of
7 me. I don't represent myself every -- I'm not a
8 lawyer. But when I can research and look and read, I
9 don't have a problem. I don't have a problem with
10 comprehending. I'm not a lawyer, though, no. So I
11 don't know off the top of my head. I don't have a
12 bar -- I didn't take the bar exam.

13 THE COURT: Do you know how to issue
14 subpoenas?

15 THE DEFENDANT: How to issue subpoenas? Yeah.
16 I would write something up saying that I want him to
17 show to court. I need him to come to court. All of
18 these things are in the Westlaw and Lexis and Nexis
19 to guide you through. I know that much. That's how
20 I've been doing it. The times I have represented
21 myself, I used the computer system.

22 THE COURT: Okay. And how do you -- what are
23 the rules for conducting cross-examination of the
24 State's witnesses?

25 THE DEFENDANT: I would have to read up on

1 those. I don't know that verbatim. I'm already
2 doing 89 trillion things every nanosecond to try and
3 function with multiple sclerosis. In order for me to
4 try to memorize the law, I don't see it happening.
5 If I could get the left side of my brain to function
6 and maybe another 10 percent of my right side,
7 possibly.

8 THE COURT: What defenses might be available
9 to you?

10 THE DEFENDANT: "Defenses"? Meaning? Would
11 you elaborate?

12 THE COURT: What legal defenses might be
13 available to you charged with these crimes?

14 THE DEFENDANT: Well, first off, I didn't
15 assault anyone. My legal defenses would be is that
16 the man was on one side of the car --

17 MR. JEFFERSON: Don't say anything about
18 the --

19 THE DEFENDANT: Oh. But I'm trying to answer
20 the question.

21 THE COURT: Okay. So what you're telling me
22 is that one of your defenses would be a denial; that
23 you simply deny that it happened.

24 THE DEFENDANT: Well, for one I can deny that
25 it happened. It happened in broad daylight.

1 THE COURT: Okay.

2 THE DEFENDANT: And I'm not stupid --

3 MR. JEFFERSON: Stop.

4 THE DEFENDANT: All right.

5 THE COURT: That's all I need to know. Thank
6 you.

7 THE DEFENDANT: I freaked out.

8 MR. JEFFERSON: Don't comment because anything
9 that you say here can be used against you.

10 THE DEFENDANT: That's fine.

11 MR. JEFFERSON: -- so --

12 THE DEFENDANT: -- everybody needs to --

13 MR. JEFFERSON: -- stop. I need you to stop
14 when I ask you to stop.

15 THE DEFENDANT: All right.

16 THE COURT: Have you ever prepared jury
17 instructions?

18 THE DEFENDANT: Yes.

19 THE COURT: Tell me about that.

20 THE DEFENDANT: It was a while ago. But --
21 wow. Did I prepare instructions? All I know is I
22 interviewed the jurors. I remember that.

23 THE COURT: Tell me --

24 THE DEFENDANT: And I picked a pretty good
25 jury.

1 THE COURT: Tell me about -- are you familiar
2 with jury instructions?

3 THE DEFENDANT: Oh, yeah. They're going to
4 have a certain guideline for certain crimes. And
5 they have to follow those guidelines. I know that
6 much.

7 THE COURT: Okay. Tell me what jury
8 instructions are.

9 THE DEFENDANT: Well, jury instructions would
10 have to instruct -- it's what the -- the instructions
11 for the jury are to go by.

12 THE COURT: Okay. And how is the jury
13 instructed?

14 THE DEFENDANT: By law.

15 THE COURT: Do you know how to prepare
16 proposed jury instructions?

17 THE DEFENDANT: Well, if I don't know off the
18 top of my head, I can figure it out.

19 THE COURT: Tell me how a trial works after a
20 jury is picked.

21 THE DEFENDANT: Well, after a jury is picked,
22 they're going to sit back, and they're going to --
23 they're going to look at the elements of the crime.
24 First off, they're going to see does this person meet
25 the elements of the crime. Then they're going to go

1 over the elements of the crime. And then they're
2 going to figure out if this person's guilty or not
3 guilty. They're going to sit back and talk about it.

4 THE COURT: How is the evidence presented to
5 the jury?

6 THE DEFENDANT: How is it presented to them?
7 Oh, well, you've got your prosecution and then you're
8 going to have your defense. They're going to give
9 you each part of their -- their evidence. And then
10 it's up to the jury to decide you've got -- you've
11 got -- you've got one side of a story, another side
12 of the story, and then you've got the truth. Their
13 job is to figure out what the truth is.

14 THE COURT: And tell me how evidence is
15 presented to the jury, in what form?

16 THE DEFENDANT: Well, there's several forms.
17 It's going to be -- it's going to be presented to
18 them in black and white, on paper. It's going to be
19 presented to them through the people that are being
20 held accountable or being charged with these crimes.
21 The prosecution, your attorneys. That's how.

22 THE COURT: And you said something about black
23 and white --

24 THE DEFENDANT: Paper.

25 THE COURT: -- on paper. Tell me about that.

1 How is that evidence presented to a jury?

2 THE DEFENDANT: Well, it's given -- it's given
3 to them on a printout.

4 THE COURT: Give me an example of that.

5 THE DEFENDANT: Well, right here. Evidence.
6 I mean, it's not necessarily good evidence or it
7 might not even be proper evidence, but they've got to
8 read through it and decipher to see if it is proper
9 evidence or it can be.

10 THE COURT: And give me an example of what
11 written evidence might be presented to a jury.

12 THE DEFENDANT: Oh, well, a police report. A
13 police report is evidence. Video surveillance is
14 evidence. I don't know if they use criminal history.
15 But criminal history should be evidence. Beings that
16 I don't have any assaults on my record, I'm going to
17 bring my own. Out of 40 years of not having any
18 assaults, I don't think I have a record of assaulting
19 people. I don't have that pattern.

20 THE COURT: So are you telling me that if you
21 were representing yourself, it would be your
22 intention to advise the jury of your criminal
23 history?

24 THE DEFENDANT: If necessary. I -- I don't
25 think -- I don't know if I would need to. I'm

1 saying -- my point is this: If I need to, I'll pull
2 that rabbit out of a hat, because I know that
3 witnesses -- what do you call them? -- expert witnesses
4 will show you a person with a 40-year history, within
5 their first ten years, they're going to show a
6 pattern of violence. And then they're not going to
7 take 40 years to become a violent person. So I know
8 good and well, even though I was under the influence
9 of drugs --

10 MR. JEFFERSON: Stop.

11 THE COURT: Tell me about collateral
12 consequences of a conviction. Does that make sense
13 to you? Have you heard that term before?

14 THE DEFENDANT: Collateral --

15 THE COURT: Collateral consequences of
16 conviction. What happens to you in addition -- or
17 what might happen to you if you are convicted?

18 THE DEFENDANT: What might happen? All kinds
19 of things can happen to me if I'm convicted. I don't
20 know how -- I don't know what you -- I don't follow
21 you.

22 THE COURT: What legally might happen to you
23 in the event you are convicted of a crime?

24 THE DEFENDANT: Legally?

25 THE COURT: Yes.

1 THE DEFENDANT: I could go to prison.
2 THE COURT: Anything else?
3 THE DEFENDANT: Well, I'd become a hell of a
4 burden to the state.
5 THE COURT: Do you have any legal training?
6 THE DEFENDANT: Well, I represent myself. I
7 stay in the law libraries when I do go to prison. I
8 guess I could be somewhat of a semi-paralegal.
9 That's what I do. I hang out in the law libraries.
10 That's what I do when I do time.
11 THE COURT: Do you have any formal legal
12 training?
13 THE DEFENDANT: Well, the best you can get in
14 prison and correspondences in places like Lawyers
15 Guild in New York, places in Oakland, California,
16 people who are trying to stop the modern day he who
17 slave prisons initiative act.
18 THE COURT: Do you know how to challenge a
19 juror?
20 THE DEFENDANT: Challenge a juror. Could you
21 expand on that, "challenge a juror"?
22 THE COURT: Do you know how to challenge a
23 juror?
24 THE DEFENDANT: I don't understand your
25 meaning behind "challenge."

1 THE COURT: Have you ever heard that
2 term, "challenge a juror"?

3 THE DEFENDANT: Legally, no. I need a law --
4 a Black's Law Dictionary so that I could answer that
5 correctly. Because to challenge someone means to -- I
6 don't know -- get in their face somehow, so to speak.
7 So to challenge a juror -- I don't know. Do you
8 like -- how could that work? I mean how would I
9 approach a juror? Are you a juror? Are you sane?
10 Are you a racist, or do you hate criminals? I don't
11 know what you mean. I'd have to look that up and
12 decipher that one to figure out what you're talking
13 about.

14 THE COURT: What constitutional rights do you
15 have with respect to an attorney and representing
16 yourself?

17 THE DEFENDANT: What Constitutional rights do
18 I have. Say it again, please.

19 THE COURT: What Constitutional rights do you
20 have and everyone else have with respect to a right
21 to an attorney and a right to represent himself or
22 herself?

23 THE DEFENDANT: What Constitutional rights do
24 I have -- of an attorney, you said?

25 THE COURT: Yes.

1 THE DEFENDANT: Well, I should be represented
2 by -- I should have the -- I'm supposed to have the
3 opportunity to be represented by an attorney. But I
4 don't need that. I'm fully aware of how to go
5 through the motions of this. I've been doing it for
6 40 years. It's not nothing new to me.

7 THE COURT: Okay. And you've said now on
8 three separate occasions that you're familiar with
9 how to go through the motions. Give me as much
10 detail as you can with respect to the motions that
11 you go through to represent yourself.

12 THE DEFENDANT: Follow protocol.

13 THE COURT: Tell me about the protocol.

14 THE DEFENDANT: Step by step.

15 THE COURT: Tell me about the steps.

16 THE DEFENDANT: Arraignment, omnibus,
17 pretrial, trial.

18 THE COURT: Tell me about the steps at trial.

19 THE DEFENDANT: Pick a jury. Jury selection.
20 Then I present proving my innocence, and then I --
21 you know, we go battle -- we go -- me and the
22 prosecution will go head to head on our issues.
23 We'll battle our issues.

24 They'll come up with their issues, and I'll de-but
25 (sic) them. I'll come up with mine, and they'll

1 de-but (sic) mine, and they will go off and back and
2 forth like that until it's done. The jury will
3 decide.

4 THE COURT: You've said in general terms that
5 you go back and forth. Tell me how that's done.

6 THE DEFENDANT: "Back and forth" meaning?

7 THE COURT: I'm asking you. You said you go
8 back and forth with the prosecutor.

9 THE DEFENDANT: Oh, well, we will have
10 questions, he'll have questions, you'll have answers,
11 you'll have statements, and that's what I mean.

12 THE COURT: Okay.

13 THE DEFENDANT: That's all.

14 THE COURT: Mr. Jefferson, do you wish to be
15 heard on this issue?

16 MR. JEFFERSON: Your Honor, what I'd like the
17 court to know is that Mr. Davis let me know very
18 early on that he wanted to be interested in
19 representing himself. And in every meeting that we
20 had he made that an issue. Basically I asked him to
21 put something in writing. When he did so, I made
22 that available to the court. He seems pretty
23 forthright in that he wants to represent himself.

24 THE COURT: Thank you.

25 Mr. Thompson, does the State propose any

1 additional questions for the court to ask of
2 Mr. Davis?

3 MR. THOMPSON: Your Honor has covered a number
4 of areas. He has referenced his past criminal
5 history. Perhaps further colloquy could go into what
6 of those would be admissible and not admissible.

7 THE COURT: Okay. Mr. Davis, with respect to
8 your criminal history, what convictions would be
9 admissible against you and what of those convictions
10 might not be admissible against you at a trial?

11 THE DEFENDANT: Hmm. You can bring them all
12 up to the forefront, because I don't have any violent
13 history.

14 THE COURT: From a legal perspective, what
15 might the prosecutor -- what convictions do you have
16 that the prosecutor might be able to introduce
17 against you?

18 THE DEFENDANT: Nothing. I don't think so. I
19 mean, he might have something that says this or says
20 that, but that's still not a -- that's not a
21 conviction. I mean, I've had problems with
22 King County Jail. I've had problems with, you know,
23 officers socked me in the jaw and claimed that I
24 assaulted him. But, I mean, that's just how it goes.

25 THE COURT: Okay. Thank you.

1 Mr. Thompson, any other proposed questions that
2 the State might have?

3 MR. THOMPSON: Your Honor, at this point, no.
4 I think there's a sufficient record.

5 THE COURT: Okay. Thank you.

6 Mr. Davis, anything else you'd like to tell me?

7 THE DEFENDANT: Well, I'd like for you -- I
8 would like to -- Mr. Jefferson said he would be my
9 standby counsel. I would -- I would appreciate that.
10 I know I'm going to have to put in a motion for an
11 investigator and also for -- what you call them
12 witnesses? What are they called? I can't think of
13 the word right now. I lose words sometimes. Like a
14 doctor. They would be a -- expert witnesses. I'm
15 going to need a couple of expert witnesses.

16 Other than that, that's about it, other than to
17 notify the court or Thurston County Jail that I am
18 pro se, so they can start whatever process with what
19 limited resources they're going to allow me to have.
20 And I need to start working on my case so we can get
21 it out of here so I can get back to King County and
22 deal with my other cases.

23 THE COURT: And you referenced expert
24 witnesses. Why might expert testimony assist you in
25 your defense?

1 THE DEFENDANT: Well, for one, I have multiple
2 sclerosis. And -- dealing with my brain, my brain
3 stem. Most -- you know, for the most part. I'm
4 under the influence of --

5 MR. JEFFERSON: Hold up..

6 THE COURT: Tell me, what's the issue with
7 respect to your brain stem?

8 THE DEFENDANT: Well, it's your brain. I
9 don't know. They -- and neurologists don't know.
10 But I know when I start to hallucinate and see things
11 under other influences --

12 MR. JEFFERSON: Hold on --

13 THE DEFENDANT: -- like -- like drugs --

14 MR. JEFFERSON: -- hold it. Stop, stop.

15 THE COURT: Okay. I'll ask you to stop there.

16 Do you have any history of mental illness?

17 THE DEFENDANT: No. But when I use a
18 substance --

19 MR. JEFFERSON: Hold on.

20 THE DEFENDANT: All right. All right.

21 THE COURT: And you referenced Mr. Jefferson
22 as standby counsel. What does that -- tell me what
23 that means to you.

24 THE DEFENDANT: That just means if he's able
25 to say, okay, don't go left, go right, I should go

1 right. He's not going to do the case for me. What
2 he could do is kind of, okay, that's the wrong
3 approach; you must think about that differently.
4 Stuff like that. He'd give me hints. That's what I
5 understand about standby. They're not going to do
6 the -- nobody's going to do this case for me but me,
7 and I don't want nobody to. I understand that.

8 THE COURT: Tell me about your constitutional
9 rights. What constitutional rights do you have and
10 do all of us have here in the courtroom -- for that
11 matter, all of us here in the community? What are
12 our constitutional rights if we are charged with a
13 crime?

14 THE DEFENDANT: Well, one of our
15 constitutional rights is the right to exercise -- is
16 to represent ourselves in a case law, to be heard.

17 THE COURT: What are the other constitutional
18 rights?

19 THE DEFENDANT: I don't know. I'd have to get
20 my list and go over them. Remembering things, ADHD
21 is not one of my best things. I have to have a book
22 in front of me and read them. That's just one of my
23 issues. I'm one of those ADHD to the 25th power. I
24 forget to go to the bathroom.

25 THE COURT: Okay.

1 Anything further you'd like to tell me?

2 THE DEFENDANT: Well, I'd like to hurry up and
3 get this case on the road and get it done with.

4 THE COURT: And Mr. Thompson, the court
5 understands that this matter is scheduled for trial
6 the week of the 22nd of June, as I understand it.
7 Today is the 8th of June, so it is set for two weeks.
8 Is that accurate?

9 MR. JEFFERSON: Right, Your Honor.

10 THE DEFENDANT: It works for me.

11 THE COURT: Okay. The court is ready to rule.

12 Mr. Davis, the court has conducted what it
13 believes to be the appropriate and in fact even a
14 lengthy colloquy with you regarding the issues the
15 court needs to consider on the ultimate issue of
16 whether to grant your motion to waive counsel and
17 represent yourself. The court understands and
18 appreciates an individual's right to represent
19 himself or herself. That is a constitutional right,
20 of course.

21 The court has to find that any such waiver is made
22 knowingly and intelligently. With respect to whether
23 a waiver is made intentionally, is anyone threatening
24 you to give up your right to be represented by a
25 lawyer?

1 THE DEFENDANT: No.

2 THE COURT: Are you under any duress
3 whatsoever?

4 THE DEFENDANT: No.

5 THE COURT: Okay. The court finds that
6 Mr. Davis has shown to the court that is voluntarily
7 waiving his right to counsel, but the court believes
8 that Mr. Davis is not making any proposed or
9 proffered waiver intelligently and knowingly based
10 upon the colloquy that the court has had with
11 Mr. Davis.

12 The court means no disrespect to Mr. Davis
13 whatsoever. The court appreciates Mr. Davis's desire
14 to represent himself. But it is clear, based upon
15 the record to this court and from the court's
16 reviewing of the record and the file, at least the
17 electronic version of this file, that Mr. Davis lacks
18 the necessary skills or knowledge to represent
19 himself, notwithstanding the possibility that he
20 represented himself on a prior occasion in
21 King County.

22 Mr. Davis has not provided the court with any
23 detailed information with respect to how to conduct a
24 trial, beginning at how to pick a jury. There is no
25 evidence in the record, despite the court's colloquy

1 with Mr. Davis, regarding how witnesses are examined,
2 in what order they are examined, how it is done, how
3 testimony -- or, excuse me, other exhibits are
4 offered into evidence, no reference to opening
5 statements, closing statements, how to conduct proper
6 examination. Mr. Davis has no experience with
7 respect to offering or drafting proposed jury
8 instructions. And in fact, Mr. Davis doesn't seem to
9 understand what jury instructions are.

10 It is this court's opinion, very strong opinion,
11 that Mr. Davis would be doing himself a disfavor by
12 representing himself based upon his lack of the
13 requirements --

14 THE DEFENDANT: I disagree.

15 THE COURT: -- that would be placed upon him,
16 including being familiar with the rules of evidence
17 and the rules of court and how to conduct a trial.

18 So based upon those findings, the court will deny
19 Mr. Davis' motion to represent himself. And the next
20 court appearance, I believe, is confirmation on the
21 17th.

22 Thank you.

23 MR. THOMPSON: Thank you, Your Honor.

24
25 (Conclusion of June 29, 2015, Proceedings.)

1 THE COURT: I'm not in a position today,
2 because I haven't been provided with --

3 THE DEFENDANT: Were you provided with --

4 THE COURT: It looks to me as if you have at
5 least five different legal-size folders full of
6 papers. They look to me to be about four inches
7 high.

8 THE DEFENDANT: Most of them right there it's
9 only seven pages long, and it's handwritten.

10 THE COURT: I haven't had an opportunity to
11 review it.

12 THE DEFENDANT: I have a lawyer right here to
13 give it to you.

14 THE COURT: Mr. Jefferson, the Court is not
15 going to grant the request for the furlough on the
16 record that's in front of the Court.

17 THE DEFENDANT: I need that motion done.

18 THE COURT: Mr. Davis, I didn't interrupt you,
19 and I don't want you to interrupt me. I'm not going
20 to grant --

21 THE DEFENDANT: I have been interrupted since
22 I was arrested.

23 THE COURT: -- the motion today for the
24 furlough. With respect to the request from
25 Mr. Jefferson on Mr. Davis' behalf to proceed pro se,

1 based on what I'm observing today, I'm not
2 comfortable granting that request.

3 THE DEFENDANT: I will just put another motion
4 in for it. It doesn't matter.

5 THE COURT: Mr. Davis, what are the charges
6 against you? Do you know what they are?

7 THE DEFENDANT: The charges against me?

8 THE COURT: Yes, sir.

9 THE DEFENDANT: Second degree assault and
10 malicious mischief with a deadly weapon and malicious
11 mischief, which is outrageous.

12 THE COURT: Do you know what the standard
13 range is?

14 THE DEFENDANT: 68 months to 70-something
15 months.

16 THE COURT: Have you ever represented
17 yourself?

18 THE DEFENDANT: Yes, I have two cases right
19 now in King County Superior Court.

20 THE COURT: Mr. Davis, you don't need to yell
21 at me.

22 THE DEFENDANT: I am not. I just have a
23 migraine. It's kind of difficult to -- I just got
24 out of a cold. With this compromised immune system,
25 colds really affect me and anger -- I manifest my

1 anger to grasp stimulation, chemically, electrically,
2 anatomically, and everything else and also
3 stimulation and pain relief, anyway, sorry.

4 THE COURT: All right. Are you ready to go to
5 trial?

6 THE DEFENDANT: Yes.

7 THE COURT: And what have you done to prepare
8 for trial?

9 THE DEFENDANT: Well, currently, I haven't
10 much to be done, because I'm not pro se to use of
11 limited supply of their database. I haven't had the
12 opportunity to hire expert witnesses on my behalf.
13 My 3.5, I haven't had a chance to write that. I
14 haven't had a chance to do anything but be harassed,
15 abused, and neglected in a county jail that doesn't
16 even have a medical system.

17 THE COURT: All right. Thank you, Mr. Davis.
18 Mr. Jefferson, anything?

19 MR. JEFFERSON: Your Honor, if I could
20 supplement the record on a couple of issues?

21 THE COURT: Briefly.

22 MR. JEFFERSON: Number one, in February of
23 this year on two cases, he was allowed to proceed pro
24 se in King County on other matters.

25 THE COURT: And what happened in those cases?

1 MR. JEFFERSON: Your Honor, this case
2 happened. There are currently bench warrants
3 outstanding on those cases.

4 THE DEFENDANT: And why is that?

5 MR. JEFFERSON: The other thing in this case,
6 we entered a Consolidated Omnibus Order on this
7 matter. No 3.5 hearing was set. The information
8 that I see in the file contains that there were no
9 custodial statements made in this case. In addition,
10 the defense has hired an investigator. Not all of
11 the interviews have been completed yet.

12 THE COURT: Thank you. Mr. Wheeler, go ahead.

13 MR. WHEELER: We don't normally take a
14 position on this issue, and I'm not at this point,
15 but I would, for the Court's information, direct the
16 Court to June 8th in which Judge Dixon already had a
17 pro se colloquy with this defendant and denied the
18 motion at that time. So I would ask the Court to
19 consider whether or not this issue is collaterally
20 estopped.

21 THE DEFENDANT: Oh, my God. He asked me
22 questions that you ask at a bar exam, but if I had
23 the printouts, I could answer them, and I am prepared
24 for that. So we can go over Mr. Dixon's colloquy
25 again, and I bet you I have the answers to them.

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
COUNTY OF THURSTON)'

I, SONYA L. WILCOX, RDR, Official Reporter
of the Superior Court of the State of Washington in and
for the County of Thurston hereby certify:

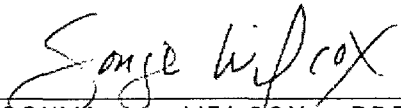
1. I reported the proceedings stenographically;

2. This transcript is a true and correct record of
the proceedings to the best of my ability, except for any
changes made by the trial judge reviewing the transcript;

3. I am in no way related to or employed by any
party in this matter, nor any counsel in the matter; and

4. I have no financial interest in the litigation.

Dated this day, January 28, 2016.



SONYA L. WILCOX, RDR
Official Court Reporter
Certificate No. 2112

1 THE COURT: Judge Dixon I was not aware
2 already addressed this issue. I can tell you today,
3 Mr. Davis, based on my observations of your demeanor
4 and my discussions with you in court today, I'm not
5 prepared to find that this would be an intelligent
6 waiver on your part or a knowing waiver, although
7 certainly it appears to be what you wish. I am going
8 to deny the request today. I think that Judge Dixon
9 has already addressed it. In any event, I wouldn't
10 have been prepared to grant the request today on the
11 record in front of me.

12 MR. JEFFERSON: Yes, your Honor.

13 THE COURT: Thank you. We are going to take a
14 recess that was the last matter on the 10 o'clock
15 calendar. I will be a back at 10:30. Thank you.

16

17

18 (A recess was taken at 10:15 a.m.)

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1 Information. You have submitted the first amended
2 Information. If your case law is something that's
3 accurate, and I have no reason to doubt that it is, I will
4 evaluate it prior to this matter being submitted to the
5 jury.

6 MS. ZHOU: That's fine, Your Honor. The only other
7 thing I wanted to add was for count two, the State just
8 simply amended the language a little when going over the
9 WPICs jury instructions on Friday. The State realized
10 after a gross misdemeanor in count two, the State has to
11 allege that the damage was over \$50 but under \$750 when the
12 initial original Information just said under \$750.

13 THE COURT: All right. Mr. Jefferson.

14 MR. JEFFERSON: No objection.

15 THE COURT: All right. So that language I will read.
16 Anything else, Ms. Zhou?

17 MS. ZHOU: Not from the State.

18 THE COURT: All right. Mr. Jefferson.

19 MR. JEFFERSON: Sorry, Your Honor. One moment.
20 Your Honor, in the trial brief that I submitted one of the
21 issues -- well, I see two major issues for this morning.
22 The number one issue is that on numerous occasions
23 Mr. Davis, starting officially on May 27th, 2015, has
24 indicated that he would like to represent himself. That is
25 still his intention. And so I think there -- the Court may

1 want to go through a colloquy with Mr. Davis about that.
2 And the major points is that skill or any of that is not
3 required, just a willingness to have made the request
4 timely, which he has done on three different occasions, as
5 I've put in my brief, and that -- and that he's making this
6 request unequivocally, that he's making it knowingly and
7 intelligently knowing what the consequences of the actions
8 -- of his actions are and knowing the charge, those types
9 of things, and so I don't think that the former members of
10 the Court who heard his request made the right rulings in
11 this matter. Because he wants to proceed *pro se*. He's
12 already representing himself *pro se* in two matters in King
13 County.

14 The second issue is the issue of restraints. The
15 defense is objecting to my client wearing any restraints.
16 He's in a wheelchair. Really can't go anywhere. The only
17 thing that he can do is use his elbows or something, and
18 that's me. So those are the two major issues that I see.

19 THE COURT: All right. Well, let's take the issue
20 of *pro se* representation first. This is a decision that
21 has been previously heard by Judge Dixon who has made a
22 decision in that regard, but it has been remade.

23 Mr. Davis.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Let hear from you. Do you want to --

1 THE COURT: Mr. Davis, I feel like I need to tell
2 you you won't have time to do that. Trial starts this
3 morning.

4 THE DEFENDANT: That's fine.

5 THE COURT: This trial will not take seven days. I
6 don't believe it will. I'm going to turn Ms. Zhou and ask
7 her about that, but this trial is only a matter of a few
8 days. You will not have time to do this reading that you
9 say that you are willing to do to learn what you need to
10 learn. You won't have time. That's -- I'm very concerned
11 about that in terms of the -- again, the downside
12 consequences of you representing yourself. To the extent
13 you don't know anything now, you won't have time to learn
14 it. And Mr. Jefferson brings to the table all of that
15 knowledge right now.

16 The other thing you've mentioned about Mr. Jefferson, I
17 appreciate your concern with his case load. I have
18 observed Mr. Jefferson in trial, known him for a number of
19 years. My expectation based on that experience is
20 Mr. Jefferson will give you one hundred percent of his
21 attention during this trial. His attention will not be
22 divided as you might suspect, as you might believe it has
23 been thus far. Does that in any way make your request
24 equivocal?

25 THE DEFENDANT: Actually, no. I still remain -- I

1 still remain. I still stand on *pro se*.

2 THE COURT: Mr. Jefferson, you've been waiting to
3 speak for a while.

4 MR. JEFFERSON: Your Honor, I just wanted to point
5 out that on three different occasions he's filed documents
6 with the Court, on May 2th, 2015, on July 8th, 2015, and
7 July 21st, 2015. He also filed a document on August 25th,
8 2015. It was entitled "Motions: Immediate injunctions for
9 serious medical needs." Of note he signed the document
10 listing himself as *pro se*. I can say without divulging any
11 confidential secrets that the first day that I met him he
12 was considering going *pro se* in this matter. That was on
13 April 23rd, and then by May 27th he filed the first motion.

14 The other issue is that there are no technical
15 requirements. Mr. Davis is competent, and because of that
16 he can make the decision about whether he wants to proceed
17 or not. There's no basis of knowledge that is needed, only
18 that he timely file the motions before the Court and that
19 he go through a colloquy with the Court.

20 THE COURT: Ms. Zhou, anything from you on this
21 issue?

22 MS. ZHOU: No, Your Honor, except that it was
23 already heard in front of Judge Dixon and was denied.

24 THE COURT: I'm familiar with that.

25 So Mr. Jefferson.

1 MR. JEFFERSON: I'm sorry, Your Honor. Just about
2 the ruling that Judge Dixon made was really about the
3 technical issues.

4 THE COURT: Thank you.

5 MR. JEFFERSON: And not about the desire.

6 THE COURT: I read the -- I read the colloquy and I
7 read his decision.

8 MR. JEFFERSON: Yes, Your Honor.

9 THE COURT: So *State versus Madsen* is a case that
10 informs the Court on this issue. This is 168 Wn.2d 496, a
11 2010 decision from our Supreme Court. In that case the
12 trial judge was confronted with multiple requests for *pro*
13 *se* representation. The Court in that -- the trial court in
14 that case denied it, reserved on the first few requests,
15 denied it ultimately, denied it for reasons that the
16 Supreme Court ultimately found reversible. The Court says
17 -- starts by saying every reasonable presumption is against
18 the defendant's waiver of his or her counsel. And I've
19 said that here this morning. The court goes on to say a
20 defendant requesting *pro se* status -- when a defendant
21 requests it, "the trial court must determine whether the
22 request is unequivocal and timely."

23 Now, a first-time request on morning of trial would not
24 be timely, and I think there's ample case law to suggest
25 that this court would be entitled to deny the request if it

1 was made for the first time on the first day of trial.

2 This has -- the court file makes it clear this request is
3 not made for the first time today.

4 The court goes on to say in response to the trial
5 court's rationale in the denial of the requesting in that
6 case -- the Supreme Court goes on to say that "A court may
7 not deny a motion for self-representation based on grounds
8 that self-representation would be detrimental to the
9 defendant's ability to present his case" --

10 THE DEFENDANT: I got that right here.

11 THE COURT: -- "or concerns that courtroom
12 proceedings will be less efficient and orderly than if the
13 defendant were represented by counsel."

14 There is no question in my mind that Judge Dixon was
15 spot on when he made the decision that Mr. Davis
16 representing himself is a bad decision for Mr. Davis. The
17 colloquy that Judge Dixon had demonstrates to him and to me
18 that Mr. Davis is ill prepared to represent himself.
19 Nevertheless, our Supreme Court has decided that a
20 defendant has the right to make a poor decision. That
21 decision also makes it clear, however, that the Court
22 retains power, even if pro se status is granted, to
23 withdraw that status if it becomes unworkable, if it
24 becomes clear that the privilege -- or the right I should
25 say, not a privilege -- the right is being abused.

1 THE COURT: Okay. So let me -- because we are
2 nearing the end of the State's case, let's get closure on
3 the point of amending this Information.

4 Mr. Jefferson, you're standing?

5 MR. JEFFERSON: Your Honor, there is an issue with
6 how the impeachment might occur, but we can discuss that --

7 THE COURT: Let's do that now.

8 MR. JEFFERSON: Your Honor, Mr. Kirkpatrick gave a
9 taped statement. I have access to the statement on my
10 computer. I don't have a separate thumb drive for it or a
11 disk to be able to admit it as an exhibit so that may be a
12 problem. I also don't have a way to play it with any
13 degree of certainty at a specific moment in time. So it
14 doesn't -- the program that I have does not give me a --

15 THE COURT: Has this not been reduced to a
16 transcript?

17 MR. JEFFERSON: It has not.

18 THE COURT: So how are you expecting the procedure
19 of the impeachment to occur?

20 MR. JEFFERSON: I would expect that a question would
21 be asked. If the person agrees with the statement, there's
22 no reason to do impeachment. If the statement -- if the
23 person says "I didn't say that," then that -- that would be
24 the only extrinsic evidence and you'd have to play it.

25 THE COURT: In which case we would not have it in

1 will take our own mid-morning break.

2 Ms. Zhou, what I expect to do when I come back is make a
3 ruling on your motion to amend. To the extent that
4 Mr. Davis has any further argument to add in that regard,
5 because I recall we took a break in the course of his
6 discussion with standby counsel on that issue, I'll have
7 you respond to that, Ms. Zhou, make the ruling, we'll
8 complete this witness, and then I'll -- with that decision
9 on amending the Information being made, I guess I expect
10 you to rest at that point, and then we'll make a decision
11 with respect to the rest of our schedule for today --

12 MS. ZHOU: Yes, Your Honor.

13 THE COURT: -- prior to bringing the jury back in.
14 I don't particularly want the jury back in and out and in
15 and out here this morning. So that's what I expect to do.
16 We will be back at 20 minutes to eleven. Until then we
17 will be in recess.

18 (A recess was taken.)

19
20 (Jury out.)

21 THE COURT: Please be seated.

22 Mr. Davis, have you had an opportunity to consult with
23 your standby counsel regarding the potential impeachment of
24 the witness?

25 THE DEFENDANT: Yes, sir.

1 There's nothing to be produced positive. So it doesn't
2 make any sense.

3 Let's see here. Like I said, I'm not -- I'm not stupid.
4 I've got a long history, a criminal history, nonviolent
5 crimes, a drug history.

6 MS. ZHOU: Your Honor, I'm going to object.

7 THE DEFENDANT: Why?

8 MS. ZHOU: It's not in evidence.

9 THE COURT: I will sustain that objection. The jury
10 will disregard any statements made about Mr. Davis's
11 criminal history. That has not been made evidence in this
12 case.

13 THE DEFENDANT: I haven't had time to submit any
14 evidence. That's fine. And apparently in six months
15 neither did my attorney, but that's fine too.

16 Let's see. How I would word this? Because these are
17 one of the checks and balances I've been talking about
18 across the board that's going on in our nation, period.
19 These imbalances. Like I spoke of the ratio of
20 incarceration, ratio issue, but it just exists, and this is
21 public information that prisons and institutions are
22 imbalanced with minorities. And these are the reasons a --
23 this is some of the reasons why this is. You know, 14
24 percent of the state, 50 percent of them are incarcerated.
25 That's -- I mean, why is that is my point. What is that?

1 How is that? How is that and why aren't we fixing it? I'm
2 just making a statement.

3 Ladies and gentlemen, I suffer with multiple sclerosis
4 secondary progressive. This means I have a lot of
5 abnormalities, conditions and functions, et cetera,
6 dizziness, vertigo, confusion, balance issues, date
7 problems. Means I can't walk very well at times. Come a
8 long way. Disorientation, pressure release issues, ongoing
9 migraine, progressive, increases with pain levels,
10 atrophied muscle spasms, severe, chronic and acute pains,
11 pressure release issues, vagus system, digestive system
12 dysfunction, vagus system. The neurologists tell me that
13 my optic nerve is damaged, which it probably is.

14 Anyway, this is what I deal with. I've come a long way.
15 I've decided not to lay down and die. I stand up and live
16 and work with it. People look at me and act as though I
17 don't have anything. I'm healthy. I deal with this at the
18 jail. They've assaulted me --

19 MS. ZHOU: Objection, Your Honor. It's not in
20 evidence.

21 THE DEFENDANT: You're right.

22 THE COURT: I'm going to sustain the objection.
23 Ladies and gentlemen, please disregard the statements made
24 by the --

25 THE DEFENDANT: Which statements, Your Honor?

1 Okay.

2 Let's see. I touched on that. So I can't talk about
3 the disease, right? My condition. (Attorney-client
4 conversation.) Well, I don't really know how it affected me
5 on that day. I just know it affects you. I had a nervous
6 breakdown is what my mother would call it. Everything that
7 I'm writing in my closing, which I haven't had time to
8 prepare for, I can't really say. Other than her witness is
9 a little overenthusiastic and contradicted his self on
10 quite a few things.

11 I never mentioned stealing any cars. I never mentioned
12 taking any cars. All I said, and I do remember what I did
13 say, is sparkling, shining, bright and new. And that's
14 something I say to traffic. That's -- to me that's rent-a-
15 cars. That means there were people from out of town or
16 other people following you.

17 And yes, I have been getting paranoid schizophrenic.
18 Other than that, I don't know what else to say because
19 she's going to object and the judge is going to go along
20 with it because what she states, he states. Larry,
21 Mr. Jefferson, he hasn't had time to do anything I've asked
22 him to do in the last six months --

23 THE COURT: Ladies and gentlemen, you will disregard
24 these statements from Mr. Davis.

25 THE DEFENDANT: That's it. I'm done.

1 I have to counter it, and I got lucky. I'm going to touch
2 on that one.

3 Now, where was I?

4 There's a balance to everything. So it's a super
5 stimulant, but the balance is it's highly toxic. I learned
6 by people that I started hanging around with that used this
7 drug, I'm going a little nuts, and well, you know, from
8 overindulging in it, and I taught myself that moderation,
9 you know, I have to be careful because people were starting
10 to talk to their self and see things and hear things. And
11 I noticed that. So I didn't use much of it. But I did use
12 it daily. And I became dependent on it. But it's -- like
13 I said, it has its -- it's a super stimulant, but it's
14 highly toxic. Always a balance of something. Einstein was
15 a genius, but he was insane, my point as far as the balance

16 MS. ZHOU: Your Honor, it's closing argument.

17 THE DEFENDANT: I'm closing.

18 MS. ZHOU: And Mr. Davis is again reciting facts
19 that are not in evidence.

20 THE DEFENDANT: I'm reciting facts? Okay.

21 THE COURT: I'm going to sustain the objection.
22 Mr. Davis, please constrain your arguments to the
23 allegations in this case and the facts that have been
24 admitted.

25 THE DEFENDANT: Okay. We know the State's right.

1 THE COURT: I'm going to give you one more
2 warning to refrain yourself from speaking out in the
3 courtroom at this time. I'm trying to schedule a
4 hearing. Nobody can be heard if you're speaking over
5 everybody.

6 THE DEFENDANT: Well, I haven't been heard in
7 five months. I haven't been represented in five
8 months.

9 THE COURT: Mr. Davis, I'm going to have you
10 be removed if you don't stop.

11 THE DEFENDANT: Thank you. I don't care.

12 THE COURT: In Mr. Davis' case -- I'm going to
13 direct Ms. Zhou and Mr. Jefferson to go see court
14 administration to set a special hearing for Mr.
15 Davis' case as soon as possible.

16 THE DEFENDANT: The man is not representing
17 me.

18 (Proceedings were concluded.)
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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Cheri L. Davidson, Official Court Reporter, in
and for the State of Washington, residing at Olympia, do
hereby certify:

That the annexed and foregoing Verbatim Report of
Proceedings was reported by me and reduced to typewriting
by computer-aided transcription;

That said transcript is a full, true, and correct
transcript of the proceedings heard before Judge Anne
Hirsch on the 3rd day of September, 2015 at Thurston
County Superior Court, Olympia, Washington;

That I am not a relative or employee of counsel
or to either of the parties herein or otherwise
interested in said proceedings.

WITNESS MY HAND THIS _____ day of _____,
2015.

Official Court Reporter

1 Mr. Jefferson representing, but we are going to continue,
2 and that means that you will have an opportunity to provide
3 your case very soon, and I think -- and I'm going to turn
4 to Ms. Zhou here in a moment and ask her the expected
5 duration of her case, but my expectation is we're going to
6 find you presenting your case today, and that means that if
7 you are representing yourself, you will be held to the same
8 rules and standards of any other litigant when it comes to
9 presenting your case, and you may find yourself without the
10 evidence and the tools that you wish you had if
11 Mr. Jefferson was representing you. So again, I return to
12 my plea to you to reconsider your decision to represent
13 yourself.

14 THE DEFENDANT: Okay. Here's the thing. It's
15 obvious I'm not prepared. I just was allowed pro se today
16 after six months. I'll reenter that.

17 THE COURT: That was yesterday.

18 THE DEFENDANT: Well, I'm just saying. I haven't
19 been allowed to prepare. No time. But that's okay.
20 Whatever. My thing is this: Expert witnesses, I already
21 mentioned that to this man, but he's been 60, 75,000 people
22 case load a week. You know, I need expert witnesses on my
23 condition. I need expert witnesses on the drugs that I was
24 on. You know, I need character witnesses on my case
25 because I'm not with violence. I didn't -- this is a

1 peculiar -- this is a very ugly case to me because that's a
2 91-year-old man for one. I respect my elders. Where I
3 come from -- I don't know if you know where Lake Washington
4 is. It's where I was raised. My father was a city
5 official. Like I said, I have morals, ethics, values,
6 principles and standards. I was raised this way. But the
7 thing is, I don't go around assaulting people. But I'm
8 about law and order, and I say checks and balances, if you
9 go without checking them, they become imbalances, and
10 that's a problem across the board. I've been saying that
11 the whole time the last couple of years. You don't know
12 where I've been and what I've been going through. But
13 certainly things are going to have to be done in order for
14 me to win this case because there's another thing I need to
15 put into -- as an exhibit.

16 Ms. Zhou is not going to give me a deal because I have
17 nine points. So she's basing her case on my prior history
18 of drug charges. So it's not about me assaulting this man;
19 it's about my prior history of drug -- of drug convictions.
20 And you know, that's just ugly. You know, and that's what
21 we do. But it's okay though, but I'm not going for it.

22 But what am I to do? Just go ahead and lay down? I
23 don't lay down. If I want -- if I did that, I'd just die
24 with this condition I have. But all that being said, you
25 know, what do I do with this? You know, what do I do with

1 this? You want me to go ahead and allow this man who has
2 had no time -- you know, no disrespect. Being that he's
3 had 85,000 clients per week, how can he have time for my
4 case just right at the day of trial? I notice this is how
5 you guys do things.

6 But this case here, it looks ugly. You know, I mean, it
7 looks like I'm some predator and attack the elderly, and I
8 can't -- I can't sit -- I don't sit well with that because
9 I don't have no history of that. It don't even compute.
10 My father's turning over his in his grave. I wasn't raised
11 that way. He built a Masonic temple. He knows governors.
12 Ron Sims used to come to the house. I know city councilmen
13 and mayors, and come on. It's just -- I can't -- I can't
14 do it. I don't get it.

15 How can you -- that's why I'm putting it on record. How
16 can you not allow me any time -- I mean no time. We can
17 continue on with trial, but I need some type of time. I
18 don't know care if it's a day in that law library or
19 whatever they got over there to prepare some kind of way.
20 I mean, I'm going to go as I can because I'm going to let
21 my ADHD work for me today, but please don't take it wrong
22 or I'm not trying to be disrespectful. I'm very verbally
23 aggressive, but I'm not disrespectful until I'm
24 disrespected. But, you know, a few times I'm real passive.
25 But Your Honor, this is ridiculous. But --

1 THE COURT: All right. Mr. Davis --

2 THE DEFENDANT: I mean, come on.

3 THE COURT: I'm going to cut you off here.

4 THE DEFENDANT: Go for it.,

5 THE COURT: I'm going to characterize your request
6 as a request for some sort of delay, but we are not to your
7 case yet so we'll cross that bridge when we get to it.

8 In the meantime, Ms. Zhou, what is your expectation as
9 to the duration of the rest of your case?

10 MS. ZHOU: Your Honor, if all goes according to
11 plan, the State anticipates resting this morning.

12 THE COURT: So Ms. Zhou, let's take up your motion
13 to amend the Information. You filed a brief yesterday
14 regarding the amendment of the Information. You have added
15 the request to add a separate prong of RCW 9A.36.021 into
16 your information for count one. Do you want to make any
17 further presentation apart from what's in your brief?

18 MS. ZHOU: No, Your Honor. I think my brief was
19 sufficient.

20 THE COURT: All right. Mr. Davis, there's been a
21 motion by the State to amend the Information. If you
22 recall, your counsel, while he was still representing you,
23 objected to this. We are now taking up the matter, and
24 more formally after I received what I requested to be a
25 written submission from the State on this issue. What is

1 A. His upper torso was more on top of him.

2 Q. And from your observations from your view -- the vantage point
3 of -- where were you when you made all those observations?

4 A. I was standing right by where you would enter the driver's
5 seat.

6 Q. Okay. So you weren't in the car yourself.

7 A. I leaned into the car to pull him out.

8 Q. When you made the observations as to what the defendant was
9 doing, were you leaning into the car or were you just standing
10 by the driver's side door area?

11 A. Well, I was leaning into the car when I was hearing the
12 elderly gentleman say "Help."

13 Q. Okay. And when you saw that, you indicated that you saw the
14 defendant was somewhat on top of the elderly gentleman, did
15 you see where the elderly gentleman's head was?

16 A. Not particularly.

17 Q. Okay. No further questions.

18 THE COURT: Thank you, Ms. Zhou.

19 Mr. Davis.

20

21 RECROSS-EXAMINATION

22 BY MR. DAVIS:

23 Q. So you didn't see me until basically when you heard the window
24 break.

25 A. No. I saw you before outside of the Oyster House. You kicked

1 over a couple of cones, and then you just were mumbling to
2 yourself kind of just slurring your words, and then I saw you
3 go in the parking lot of Bayview, and that's when I just
4 waited for my bus.

5 Q. So you were watching me prior to this incident.

6 A. Well, I didn't want to get into conflict with you before so I
7 kind of kept my distance.

8 Q. Well, that's a good thing because I was pretty much out of my
9 mind.

10 MS. ZHOU: Your Honor, objection. The witness --
11 Mr. Davis is testifying for himself again.

12 THE DEFENDANT: I agree with her objection. I don't
13 know.

14 THE COURT: Okay. All right. Sustained.

15 THE DEFENDANT: I apologize. Anyway. What was I
16 getting at?

17 Q. (By Mr. Davis) Did you happen to see what happened with my
18 wheelchair and my cane?

19 A. No. I never saw a wheelchair or a cane.

20 Q. I think the police have them anyway. No further questions.

21 THE DEFENDANT: Well, wait a minute. Wait a minute.
22 No. That's it. That's it. There's enough on here that's
23 contradicting to what's in the -- on record.

24 THE COURT: All right. Thank you. No more
25 questions, Mr. Davis?

1 Q. What do you mean?

2 A. I remember bits and pieces of what happened. I freaked out.
3 I lost -- I had a diminished capacity is what they call that I
4 guess.

5 MS. ZHOU: Your Honor, I object. Can we have a
6 sidebar, please.

7 THE COURT: Ladies and gentlemen, we're going to
8 have a sidebar. Please talk amongst yourselves.

9 THE DEFENDANT: Rum and coke, please.

10 (Side-bar conference held outside hearing of jury.)

11 THE DEFENDANT: That was a good rum and coke. Next
12 time make it a double.

13 THE COURT: Thank you for your patience, ladies and
14 gentlemen. The objection is sustained.

15 Mr. Jefferson, you may continue with your questions.

16 Q. (By Mr. Jefferson) All right. Do you remember a car in the
17 parking lot of the Bayview Thriftway?

18 A. Yes. There were many cars in the parking lot at Bayview
19 Thriftway.

20 Q. Do you remember any car in particular?

21 A. Well, the one that I did break the window and I -- I -- I
22 brushed the stuff out, the little cubes -- the little balls of
23 glass off the seat and sat down, and the man punched me in the
24 head, yes.

25 Q. Okay. Why did you -- why did you go to that car?

1 THE COURT: I'll sustain the objection as to
2 narrative.

3 THE DEFENDANT: What's narrative?

4 Q. (By Mr. Jefferson) How do your medical conditions affect you
5 on a daily basis?

6 A. How do they affect me? Well, geez, how do I answer that one?
7 They affect me every nanosecond. And there's trillions of
8 these effects. But I'm dealing with -- okay. I'll explain it
9 this way: Your immune system is attacking your myelin system
10 in your brain stem, which is the communication process between
11 your brain and everything else chemically, electrically,
12 physically, atomically, systemically, tissually, and it's just
13 a whole bunch of things that it picks at and destroys.

14 Q. Does it affect how you walk?

15 A. Yes, it does.

16 Q. How?

17 A. It affects how you move, period. It affects movement, and if
18 you don't do it, you lose it. And then your body starts to
19 eat itself eventually. And it's like -- I guess I call it
20 rigor mortis, but you're still living.

21 Q. On the day of the incident were you affected by this condition?

22 A. I'm affected by this condition the rest of my life.

23 Q. Do you remember being at a Bayview store on the day of this
24 incident?

25 A. Currently, yes.

1 MS. ZHOU: And I think this goes back to the issue
2 that was addressed at sidebar.

3 THE COURT: Sustain the objection as to the answer
4 to the extent it's not tailored to what happened that night.

5 Q. (By Mr. Jefferson) How you were feeling when you got to that
6 car?

7 A. Scared.

8 Q. Why were you scared?

9 A. I don't know. I have not been able to grasp that concept of
10 why I was scared as of yet. I've been working on it. Like I
11 told you, it took me about five and a half weeks you showing
12 me that video to get the bits and pieces of why I was in jail
13 and why what happened happened.

14 Q. On that evening had you taken any drugs?

15 A. Yes.

16 Q. What drugs?

17 A. On that evening I had been on crystal methamphetamine and a
18 lack of sleep.

19 Q. Do you -- you stated that you have seen a video. Is that the
20 video that was played earlier in court?

21 A. Yes.

22 Q. All right. Do you recall what happened at the car?

23 A. Vaguely.

24 Q. What do you recall?

25 A. I recall seeing someone that I felt that knew me and I knew

1 A. Honestly, if I -- this is going to sound ridiculous, but I
2 went to that car because I felt that that was an international
3 agent that had been following me, and I wanted his help.

4 Q. What do you mean by an international agent and you wanted his
5 help?

6 A. Because I think I'd been losing it while I'd been on that
7 drug. But, like, two years of being homeless, all of my
8 avenues had been severed, and I ended up riding on the bus a
9 lot, and there was a couple of buses out here -- basically
10 there's surveillance vehicles. They're called RapidRides, and
11 it's light rail. They're all -- they're all -- they have --
12 they're all monitored. They have wi-fi systems. They have
13 surveillance systems that are, like, amazing. And I met a lot
14 of Homeland Security people. Well, I could tell.

15 Q. Are you mentioning this because you took a bus ride down here
16 on that evening?

17 A. No. I mention it because these are some of the things I've
18 been going through the last couple of years. I'm getting to a
19 point where it's when I mention that I thought -- well, I
20 still feel he might be, but now --

21 MS. ZHOU: Your Honor, the State's objecting to
22 relevance.

23 THE DEFENDANT: Well, relevance --

24 THE COURT: Hold on, Mr. Davis.

25 THE DEFENDANT: Sorry.

1 So obviously we have an interval here. I suggest that
2 we give the jury an interval of time. I will leave the
3 bench and then hope to get some further information from
4 the bailiff as to whether our juror is able to continue or
5 not.

6 So the record is clear, we had -- I think it was juror
7 four stated -- or somehow expressed to the bailiff that she
8 was unable to continue because she was feeling ill. She
9 said a couple of times that as she was walking out of the
10 courtroom that she felt like she was going to faint and she
11 was fanning herself. At that point the jury was escorted
12 out of the jury room and we are currently without the jury.

13 While we have this opportunity I do want to place on the
14 record a sidebar. At 2:16 there was a sidebar. It was
15 approximately two minutes in length. It was requested by
16 the State following a statement made by Mr. Davis during
17 his testimony about -- he used the phrase "diminished
18 capacity" in relationship to his condition that evening.
19 Ms. Zhou requested the sidebar. The Court granted the
20 sidebar.

21 At the sidebar Ms. Zhou stated that Mr. Davis had not
22 stated a diminished capacity defense in his omnibus order
23 and this was new to the State and it was too late for
24 Mr. Davis to express a diminished capacity defense at this
25 point. Ms. Zhou also said that she had objected to the

1 earlier testimony about the condition and the Court had
2 overruled the objection. At the sidebar the State -- or
3 rather the Court stated that it had permitted Mr. Davis
4 some latitude to talk about his conditions; however, it was
5 not going to permit a diminished capacity defense under the
6 circumstances and was not going to permit testimony tying
7 his conditions with an excuse or an excuse for the -- akin
8 to a diminished capacity defense in that it was not timely.

9 At that point the -- we left the sidebar, and in the
10 Court's observation the questioning continued consistent
11 with that ruling from the Court. The Court did in front of
12 the jury on the record sustain the objection that had been
13 placed prior to the sidebar.

14 Ms. Zhou, anything to add with respect to the sidebar?

15 MS. ZHOU: No, Your Honor.

16 THE COURT: Mr. Davis, anything to add?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Okay. So again, I don't know how long
19 we have here before we can adjourn. I guess what I'd like
20 to do at this point given that we are probably close to the
21 end of the testimony can we have a brief discussion
22 regarding jury instructions. I --

23 MR. JEFFERSON: We need five minutes. He needs to
24 use the restroom.

25 THE COURT: Oh. Okay. All right. Well, let us

1 SEPTEMBER 17, 2015

2 THE HONORABLE JAMES J. DIXON, PRESIDING

3 * * * * *

4 MS. ZHOU: We could address number 28 on the
5 calendar, State vs. Keith Davis.

6 THE COURT: State vs. Keith Davis, 28. Good
7 morning, Mr. O'Connor, standing in for Mr. Jefferson.

8 MR. O'CONNOR: Good morning, Your Honor.

9 THE COURT: Mr. Davis is not present. The
10 Court was advised early this morning that Mr. Davis
11 is being extremely disruptive in the jail. This
12 Court has prior experience with Mr. Davis on numerous
13 occasions, and on those occasions Mr. Davis has been
14 disruptive, and the Court has advised corrections
15 staff that Mr. Davis need not be brought up from the
16 jail this morning for purposes of this motion.

17 Mr. O'Connor?

18 MR. O'CONNOR: Your Honor, again standing in
19 for, as the Court knows, Mr. Jefferson this morning,
20 who is unavailable. He is in trial this morning.

21 I don't know if the Court had an opportunity to
22 review his motion and declaration for withdrawal. I
23 don't have much to add other than what is said. The
24 substance of it is corroborated somewhat by Mr. Davis
25 this morning. I know the Court has personal

1 experience in conducting some of the prior hearings
2 with Mr. Davis.

3 It appears that Mr. Jefferson has made earnest
4 attempts to speak with Mr. Davis prior to his trial,
5 which my understanding is to begin next week, and Mr.
6 Davis has refused to speak with his attorney to let
7 him know an alternative at this point.

8 THE COURT: Thank you.

9 Ms. Zhou?

10 MS. ZHOU: Your Honor, I will defer to the
11 Court. I can tell the Court from what I've observed
12 in court, I know -- I've also read Mr. Jefferson's
13 motion. I believe there is merit to that motion.

14 The State doesn't have any objections to allowing
15 Mr. Jefferson to withdraw. I can tell the Court that
16 we had confirmed this yesterday because it was on the
17 status calendar. My understanding is that Mr.
18 Jefferson will still be in trial next week, so the
19 likelihood of Mr. Davis' case going forward to trial
20 next week is very small. The last allowable date for
21 trial right now is September 28th. The only concern
22 the State has is with regards to the speedy trial
23 clock.

24 In addition, as far as proceeding to trial, the
25 State is ready, but we do need a firm start date

1 mainly because one of our witnesses lives on the East
2 Coast and we will have to arrange traveling
3 accommodations for them.

4 THE COURT: The Court is going to deny the
5 motion. The Court is empathetic with Mr. Jefferson,
6 but the Court believes that the problem lies with Mr.
7 Davis, not Mr. Jefferson. The Court also understands
8 that there is a distinct possibility this case might
9 not proceed to trial next week in light of the fact
10 that Mr. Jefferson will be in trial next week.

11 The Court is going to deny the motion without
12 prejudice and allow Mr. Jefferson an opportunity to
13 come back in front of the Court with his client if
14 that is Mr. Jefferson's request.

15 MR. O'CONNOR: Yes, Your Honor.

16 MS. ZHOU: Your Honor, the only thing I would
17 ask is, given Mr. Davis' disruptive behavior, if Mr.
18 Jefferson renews the motion, I would just inquire of
19 the Court as to whether the Court is willing to hear
20 it on a different calendar so Mr. Davis can appear
21 via video.

22 THE COURT: The answer to that is yes. I
23 appreciate the suggestion.

24 MS. ZHOU: Thank you, Your Honor.

25 (Proceedings were concluded.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Cheri L. Davidson, Official Court Reporter, in
and for the State of Washington, residing at Olympia, do
hereby certify:

That the annexed and foregoing Verbatim Report of
Proceedings was reported by me and reduced to typewriting
by computer-aided transcription;

That said transcript is a full, true, and correct
transcript of the proceedings heard before Judge James J.
Dixon on the 17th day of September, 2015 at Thurston
County Superior Court, Olympia, Washington;

That I am not a relative or employee of counsel
or to either of the parties herein or otherwise
interested in said proceedings.

WITNESS MY HAND THIS _____ day of _____,
2015.

Official Court Reporter

1 11 o'clock on Friday that we scheduled before the
2 vacation.

3 THE DEFENDANT: I actually have a motion to
4 dismiss counsel and a declaration.

5 THE COURT: Mr. Davis?

6 THE DEFENDANT: I'm trying to get rid of him.

7 THE COURT: Mr. Davis, I'm trying to figure
8 out a way to hear your request. Mr. Davis?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: I'm not going to allow any
11 outbursts in the courtroom.

12 THE DEFENDANT: I understand that, ma'am, but
13 I've been here five months and nothing has been
14 accomplished. He's been confiscating all of my
15 motions, and I'm just tired of it.

16 THE COURT: All right. Mr. Davis, again I
17 don't --

18 THE DEFENDANT: I apologize. I'm just not
19 used to this. I'm from King County, not Thurston
20 County. You know, we usually don't have these
21 problems. I'm already pro se with two cases and no
22 access to the courts.

23 THE COURT: Mr. Davis, Mr. Davis --

24 THE DEFENDANT: Two Washington State Superior
25 Court cases. The man has done nothing for me.

1 MS. ZHOU: Your Honor, Mr. Jefferson has a
2 meeting scheduled, and I can tell the Court that as
3 of right now I'm available at 11, but it's very
4 likely that I will not be available because I have an
5 interview that needs to be done regarding an
6 in-custody case. I'm just waiting to hear back from
7 my detective.

8 THE COURT: How about 10:30?

9 MS. ZHOU: The meeting would -- the interview
10 would actually start around 10:30. I anticipate it's
11 going to be a lengthy interview.

12 I can also tell the Court with regards to Mr.
13 Davis -- the motion to withdraw counsel or to waive
14 counsel -- it's been before the Court I think two
15 times now, and both times it's been denied.

16 THE COURT: I know that. Mr. Davis has
17 renewed the request after the Court addressed the
18 competency issues, and the Court wishes to conduct an
19 appropriate hearing.

20 Mr. Jefferson?

21 MR. JEFFERSON: Your Honor, normally I would
22 agree to the 11 o'clock which the Court has
23 suggested. I have a case that has gone on for a long
24 period of time and I finally have an -- I have a
25 client meeting set up with that particular person at

1 A. So what was the question again?

2 Q. The question is being that he hit me with his right arm, and
3 I'm over on this side, and he hit -- his wound is here on the
4 right arm, forearm, could that have been caused by him hitting
5 me instead of the glass? The reason I ask is because injury,
6 okay, that's an injury, and I'm not trying to be responsible
7 for an injury.

8 MS. ZHOU: Your Honor, I'm going to object.

9 Mr. Davis is not asking a question at this moment.

10 THE COURT: Well, the question was proper. I'm
11 going to sustain the objection to the comments after the
12 question. The jury will disregard the comments after the
13 question, but the question's permissible.

14 Mr. Davis.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: If the witness remembers the question,
17 he can answer.

18 THE DEFENDANT: Okay.

19 A. Yes, Your Honor. I think it's highly unlikely based on what
20 Mr. Lee said. He said that he punched you with his fist. So
21 he didn't use his forearm at all.

22 Q. (By Mr. Davis) Okay. Okay. Okay. I just got one more
23 question, Officer. Okay. He punched me with his fist, but
24 does it -- does that wound actually -- was it actually
25 examined to be glass is my question. Was that a wound from

1 training and experience, what do you think would have happened
2 to any parts of the car had the rock made contact with the
3 car?

4 A. Severely damaged.

5 MS. ZHOU: No further questions at this time.

6 THE COURT: Thank you Ms. Zhou.

7 Mr. Davis, cross-examination.

8

9 CROSS-EXAMINATION

10 BY MR. DAVIS:

11 Q. Yeah. Just one question, Officer. Mr. Lee hit me with his
12 right arm, right? Correct?

13 A. That's what he said.

14 Q. Okay. So I'm on the left. He hits me with a right. The
15 wound is here. Being that he has some pretty long arms, is it
16 possible that when he hit me in my head he could have hit my
17 tooth or something could have cut his arm or is that actually
18 glass?

19 MS. ZHOU: Objection, Your Honor. Speculation.

20 THE COURT: Hold on, Mr. Davis. When there's an
21 objection, you need to stop asking the questions.

22 I'm going to overrule the objection.

23 THE DEFENDANT: Okay. I'm good.

24 Q. (By Mr. Davis) Was that actually glass that cut his arm or was
25 that something else? Was it actually examined?

1 glass?

2 A. According to the fire department the lacerations were in
3 accordance with glass. It was safe to assume that it was
4 caused as a result of the window being broken.

5 Q. It's an assumption then. Is there any paperwork on that? Is
6 there -- in the incident report that it was glass that
7 actually cut his forearm?

8 A. If Mr. Davis is referring to teeth, it was pretty obvious that
9 those marks were not as a result of being struck with the
10 teeth, with his tooth.

11 Q. I don't know. I got some sharp teeth. You should see them.
12 They're pretty bad.

13 A. But it's not consistent with teeth.

14 Q. Okay. But the reason I'm saying because it's going all up his
15 forearm. It's not little cuts here and there like mostly
16 glass does. Anyway. That's it. That's all.

17 THE COURT: No more questions, Mr. Davis?

18 THE DEFENDANT: No more questions.

19 THE COURT: Ms. Zhou.

20

21 REDIRECT EXAMINATION

22 BY MS. ZHOU:

23 Q. Officer Sola Del Vigo, when you made observations of Mr. Lee,
24 did you notice any teeth marks on his forearm?

25 A. Negative.

1 Q. Okay. And after Mr. Lee was treated by the fire -- the
2 medics, did you also speak to the medics?

3 A. I did.

4 Q. Okay. And what, if anything, did the medics indicate was the
5 injuries consistent with?

6 A. Glass.

7 Q. Okay. No further questions.

8 THE COURT: Thank you, Ms. Zhou.

9 Mr. Davis, any further questions?

10

11 RECROSS-EXAMINATION

12 BY MR. DAVIS:

13 Q. Are there any written statements regarding this wound on his
14 forearm as glass in your -- I don't know -- in your records or
15 anything? Can you admit this as an exhibit?

16 A. There was a report written.

17 Q. There was a report. Okay. And it said -- it's saying --
18 stating that that was glass that -- on his forearm.

19 A. It was consistent with glass.

20 Q. Consistent with glass. That's all.

21 THE COURT: Thank you, Mr. Davis.

22 Ms. Zhou, anything further?

23 MS. ZHOU: Nothing from the State, Your Honor.

24 THE COURT: May this witness step down?

25 MS. ZHOU: Yes, Your Honor.

1 Ms. Zhou, my apologies.

2 We will resume when we are back. Ladies and gentlemen,
3 we'll see you in a few moments.

4 (Jury exits.)

5 THE COURT: All right. We'll be taking a ten-minute
6 break. I expect that we will resume and be able to
7 continue without further interruptions. Be in recess.

8 (A recess was taken.)

9

10 (Jury enters.)

11 THE COURT: All right. Please be seated. Welcome
12 back, ladies and gentlemen. We are continuing with the
13 State's closing argument.

14 You may proceed, Ms. Zhou.

15 MS. ZHOU: Thank you, Your Honor.

16 THE DEFENDANT: Your Honor, I would like to declare
17 a mistrial at this time on the grounds that --

18 THE COURT: Hold on. Ladies and gentlemen, please
19 talk amongst yourselves. We're going to have a sidebar.

20 (Side-bar conference held outside hearing of jury.)

21 THE COURT: Ladies and gentlemen, we are going to
22 have you leave the courtroom briefly.

23 (Jury exits.)

24 THE COURT: All right. So we had a sidebar. It was
25 about 15 seconds in length. The Court requested the

1 sidebar after Mr. Davis requested a mistrial. The Court
2 asked for the sidebar to try to understand what the basis
3 of the request was. When Mr. Davis at the sidebar began --
4 and to be honest, I cut him off halfway through his
5 sentence. But he began with a reference to how long he has
6 been requesting to go *pro se*, and at that point the Court
7 determined that the best way to deal with the request was
8 to excuse the jury and have the entire discussion on the
9 record.

10 So Mr. Davis, the floor is yours. What is your request
11 for a mistrial?

12 THE DEFENDANT: Okay, Your Honor. Basically I have
13 had no time to prepare for this case. In regards to
14 Mr. Jefferson, I understand he is a public defender and he
15 has a lot of clients at any given time, 60, 70 clients a
16 week, what have you, and he doesn't really have time to
17 deal with cases with a lot of time, you know, put a lot of
18 time in cases. Being that I was only -- I was allowed *pro*
19 *se* the day of trial, it's truly a disadvantage. I'm
20 already at a disadvantage, but this is really a
21 disadvantage. I've had no time to research or do nothing.

22 On top of all of that, I've been harassed at the jail
23 due to my condition as sport and play and amusement with a
24 certain group of officers, was assaulted. They're not
25 dealing with my medical issues.

1 Just besides all that, the main reason for the mistrial
2 is I've been asking to exercise my constitutional right to
3 represent myself in this matter for six months, and this
4 isn't the first time that this maneuver has been pulled on
5 me with Washington State Superior Court system. So I know
6 it's a ploy, and it's to discourage people to have their
7 chance to prove their innocence because it's not prove that
8 you're guilty beyond a reasonable doubt; it's you've got to
9 prove your innocence, and that's the whole reality of it.
10 And I mean, I really don't want to go to battle with
11 Washington State prosecution because those guys are good.

12 But I'm being charged with an outrageous crime because I
13 have nine prior points which are nonviolent, by the way,
14 and it just doesn't sit right with me. This is an odd and
15 ugly situational case, but she's going out of her way where
16 I need to really go and research and be really prepared for
17 this because she's taking assault one through five and
18 putting them all together as -- well, if he's still on the
19 ground, you have to find him guilty, things of that. She's
20 using a lot of trickery that I'm not ready for or know how
21 to prepare for.

22 This particular county jail, their *pro se* workstation is
23 not really even a workstation. And it's like you got one
24 hour. There is no set time or none of that so there's no
25 books available. There's nothing. There's a few things

1 there, but I mean, I'm just saying. I have not had any
2 time to prepare. I've asked and requested for my
3 constitutional right several times, and the United States
4 --

5 THE COURT: Two minutes.

6 THE DEFENDANT: Okay. Thank you. The United States
7 Supreme Court says you've got to let me do it if I ask to.
8 So if I exercise -- ask to exercise my constitutional
9 right, I can't be denied, but I have been. And that's
10 basically my argument for a mistrial. I'm not prepared for
11 -- to go to trial. What is it? This is the third day and
12 have had no access to any resources or time.

13 THE COURT: Ms. Zhou, your response.

14 MS. ZHOU: Your Honor, I believe the Court already
15 did its colloquy with Mr. Davis on the first day of trial.
16 He still chose to go *pro se* so I think the issue has been
17 addressed.

18 THE COURT: All right. So Mr. Davis, you have
19 argued here today for a mistrial because you are not
20 prepared to -- as you say, not prepared. At the outset of
21 this trial I had a lengthy colloquy with you.

22 THE DEFENDANT: Yes, you did.

23 THE COURT: And in that lengthy colloquy I took a
24 lot of time to talk with you about the disadvantages of
25 representing yourself. Among those disadvantages were your

1 -- the fact you weren't familiar with the evidence rules,
2 the fact you weren't familiar with the protocols. In
3 addition to that you said I believe I'm a smart gentleman
4 and I can learn this, and I can learn how to do this, and I
5 said to you, Mr. Davis, I said to you this trial is -- you
6 don't have time to learn this. This trial, you don't have
7 time, and because of that you had a counsel who had
8 confirmed that this was ready for trial, who was ready to
9 go, and I pleaded with you to have Mr. Jefferson represent
10 you in this case.

11 THE DEFENDANT: He's not ready.

12 THE COURT: Don't --

13 THE DEFENDANT: I'm sorry.

14 THE COURT: I pleaded with you to not represent
15 yourself. I pleaded with you in part, in large part,
16 because you are not prepared to do this trial. You are not
17 capable of understanding the evidence rules. You don't
18 understand how to go about doing this.

19 Now, I also explained to you that the case law of this
20 state says regardless of your inability to technically
21 understand what's going on here you have the right to move
22 forward without a lawyer. I repeatedly, not at the
23 beginning, not only at the beginning, but throughout the
24 first day and in the second day pleaded with you to have
25 Mr. Jefferson represent you, and we are now halfway through

1 or perhaps even further than that through the State's
2 closing arguments, and you've asked for a mistrial because
3 of all of the things I explained to you on the first day,
4 and you've nevertheless made the decision to move forward
5 on your own.

6 This court has been, in my view, exceedingly patient
7 with you and your representation of yourself. I have at
8 every step endeavored to protect you and your
9 constitutional rights to represent yourself in this trial,
10 and yet you ask for a mistrial halfway through or
11 three-quarters of the way through the State's closing
12 argument. I am denying your request for a mistrial. I am
13 permitting you at this time to have Mr. Jefferson represent
14 you in your closing arguments. I have not asked the
15 State's perspective on that. I don't know if the State has
16 an objection to that, but that --

17 Is there an objection, Ms. Zhou?

18 MS. ZHOU: No, Your Honor. I think it's -- as the
19 Court indicated, it was a hybrid.

20 THE COURT: Mr. Jefferson has been with you at your
21 side every step of the way. Now, to the extent that
22 Mr. Jefferson's ability to represent you in your closing is
23 compromised by his inability to be your counsel throughout
24 this trial, that is certainly something this court
25 understands as well as any appellate court looking at this

1 needs to understand, but at this point your decisions this:
2 To move forward with you doing your closing argument or to
3 move forward with Mr. Jefferson doing your closing
4 argument, but this trial is continuing. What is your
5 decision?

6 THE DEFENDANT: I'm going to continue, but there is
7 case law, Your Honor, that says you have to allow me
8 appropriate time.

9 THE COURT: Mr. Davis, I have given you a lot of
10 leeway throughout this trial, extra time to prepare your
11 own testimony, extra time to -- an entire evening to plan
12 your closing. Your time has been provided to you. In
13 addition to that, the lack of time from the outset of this
14 trial was explained to you by me, and you insisted to
15 represent yourself. I again plead with you to have
16 Mr. Jefferson do your closing argument for you. I am
17 asking you again, as I've asked you multiple times
18 throughout this trial, please have Mr. Jefferson do your
19 closing argument.

20 THE DEFENDANT: One question. How come my public
21 defender gets six months and I get three days to represent
22 myself? He's a lawyer with the bar, and I'm a *pro se*
23 litigant, but I get three days and he gets six months. She
24 gets six, seven months or whatever it's been, six months to
25 prepare. She's the prosecutor. He gets six months to

1 prepare. He's a lawyer. But I get three days to prepare,
2 and I'm a *pro se* litigant. How does that -- how does that
3 compute? What's the math on that? I don't --

4 THE COURT: Mr. Davis, there was no request for a
5 continuance made at the outset of this trial when I
6 explained to you the difficulties that you would have in
7 representing yourself. I am -- I have made my decision.
8 You have a decision -- Mr. Davis. You have now a decision.
9 Do you move forward with you doing your closing argument
10 that will be consistent with the rules of evidence, or
11 would you finally agree to have Mr. Jefferson represent you
12 for the purposes of your closing argument?

13 THE DEFENDANT: I'm going to move forward.

14 THE COURT: All right. I expect that we will move
15 forward without further interruptions or delays apart from
16 legitimate objections, and we will continue with this case.

17 Let's bring the jury back in.

18 Ms. Zhou, when the jury's in, you may continue with your
19 closing.

20 MS. ZHOU: Yes, Your Honor. Thank you.

21 THE COURT: Mr. Jefferson, did you want to be heard?

22 MR. JEFFERSON: No, Your Honor. Thank you, Your
23 Honor.

24 (Jury enters.)

25 THE COURT: All right. Please be seated.

*trial cost
ever
I Asked
Prepare*

Keith A. Davis #216001169
King County Jail
500 Fifth Avenue
Seattle, WA 98504

April 15, 2016

David C. Ponzoha, Clerk
Washington State Court Of Appeals
Division I I
950 Broadway, Suite 300
Tacoma, WA 98402

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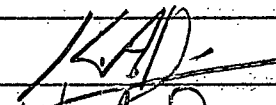
Mr. Ponzoha,

Enclosed Is My Statement Of Additional Grounds
For Review. I Am Currently Housed, Residing In
The King County Jail. I Am Indigent. I Am
Unable To Pay For Copies. I Only Receive, Three
Pieces Of Paper A Week. Had To Sell Food, From
My Meal Trays For Paper.

I Request, That The Court Will Accept My
S.A.G., And Duplicate Necessary Copies
For Attorneys And Myself. Thank You.

Please Apprise Me Of Your Decision.

Keith A. Davis #216001169 Respectfully,
King County Jail
500 Fifth Avenue
Seattle, WA 98104


Keith A. Davis